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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,716	07/22/2003	Matthew Hayduk	034017R003	4925

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SMITH, GAMBRELL & RUSSELL  
1850 M STREET, N.W., SUITE 800  
WASHINGTON, DC 20036

EXAMINER
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CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/623,716

Applicant(s)

HAYDUK, MATTHEW

Examiner

Melvin A. Cartagena

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 45-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38, 40-42, 44 and 56-60 is/are rejected.
- 7) ☒ Claim(s) 8-11 and 13-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-34, 39 and 56-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: it's not clear from reading claim 1, line 7 and 8, what adjustment of the reception chamber are prevented by the lacking means, it appears the locking means are to properly align the reception chamber in the housing.

Regarding claim 22, in lines 4 and 5 the phrases "a sticking relationship" and "a pre-stick position" respectively renders the claim indefinite. The examiner asks, what is a sticking relationship?

Regarding claim 39, in line 2 the phrase "rod stick movement prevention means" renders the claim indefinite.

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 12, 20, 21, 23-30, 34, 35, 40-42, 56-58 and 60-62 rejected under 35

U.S.C. 102(b) as being anticipated by US 5,186,905 to Bertram et al.

Bertram shows a cartridge port for dispensing foam as seen in Figs. 1 and 5 having a housing 11, a fluid reception chamber 13 formed out of a cold flow material and having a rod passageway formed to received a rod 17, an annular locking means 63, compression washers 26, at least two chemical inlet ports 16, an enlarged solvent fluid receiving chamber 25, removable back and front cap 30 covering the solvent receiving chamber and retaining seals 23 and 24.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 31-33, 36-38, 44 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,186,905 to Bertram et al. in view of US 4,993,596 to Brown.

Bertram shows all claimed features as discussed above but is silent about using threads to assemble the components of the mixing chamber and assembling the chamber without the use of tools. Brown shows a mixing and dispensing gun with using threads 134 and 116 to assemble the

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dispensing gun without the use of tools, see the abstract, lines 1-9. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Bertram to utilize threads to assembly the components of the dispensing gun and to assembly the gun by hand without the use of tools as taught by Brown since the above combination represents a substitute of well-known alternative equivalent mechanical fastening to mechanically assemble the multiple components of the gun which is well known within the level of skill in the art, and eliminating the need for using tools to assemble the dispensing gun makes the assembly and disassembly fast and foolproof.

***Allowable Subject Matter***

7. Claims 8-11 and 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments filed July 3, 2006 have been fully considered but they are not persuasive.

With respect to the claim 1, there is no mention in the specifications that the reception chamber is adjustable, the locking means are merely require to prevent or at least minimize any tendency for the mixing chamber to move backwards or shift with respect to the housing as the rod cycles between the open and close positions. In addition, arguments that the retention ring 63 is designed to maintain a flush sliding relationship between the interior curved surface of the port housing and the reciprocating rod, see Fig. 5 and column 8, lines 1-9, of Bertram. Once the

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retention ring 63 is press fit into the housing 11, the ring locks and prevents the block 13 from moving in any direction.

With respect to the argument that the porous material of the cap 30 is ill suited for threads, it is noted that proper retention by threads can be obtained from many porous material, some of the factors to consider are the shear strength of the material and the forces that would be apply to the threads, if those parameters are within design requirements the porosity of the material is irrelevant.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAC 9/15/06

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